

**FILED**

**MAR 14 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SANTIAGO DE JESUS OLIVA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-74965

Agency No. A70-922-417

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

Santiago de Jesus Oliva, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' summary affirmance of an immigration judge's denial of his motion to reopen following an in absentia order of deportation entered on April 27, 1995. He contends that the order of

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation should be rescinded because he did not receive notice of his hearing. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

We review the denial of a motion to reopen under 8 C.F.R. § 1003.2 for an abuse of discretion. *Shaar v. INS*, 141 F.3d 953, 955 (9th Cir. 1998). We review the immigration judge's fact findings for substantial evidence. *Sharma v. INS*, 89 F.3d 545, 547 (9th Cir. 1996). Determinations of purely legal questions are reviewed de novo. *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000).

An order to show cause was served on de Jesus Oliva by certified mail. It therefore was effectively delivered. *See Busquets-Ivars v. Ashcroft*, 333 F.3d 1008, 1009 (9th Cir. 2003) (holding that notice sent by certified mail to petitioner's last known address entitled to strong presumption of effective delivery). De Jesus Oliva did not send his change-of-address letter to the Office of the Immigration Judge, as instructed by the order to show cause. Therefore, the notice of hearing also was properly served. In light of these findings and de Jesus Oliva's lack of diligence in waiting eight years to file his motion to reopen, the immigration judge did not abuse his discretion in denying the motion. *See Shaar*, 141 F.3d at 955.<sup>1</sup>

**PETITION FOR REVIEW DENIED.**

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<sup>1</sup> Respondent's motion to strike petitioner's opening brief is denied.